

AG Contract No.: KR06-1235TRN
ADOT ECS File No.: JPA 06-127
Project No.: GO20247
Project: 59th Ave Olive to Mtn View Rd.
TRACS No.: SS586 01C
C-5906 1/23/07
Budget Source Item No.: N/A



INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY GLENDALE

THIS AGREEMENT is entered into February 22nd, 2007, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "CITY").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the City and is the designated agent for the City. Funds expended for the project, are authorized by reason of Federal law and regulations.

NO. 28730
Filed with the Secretary of State
Date Filed: 2-22-07

Secretary of State
By: 

7. The work embraced in this Agreement is for adding an auxiliary right turn lane at the northwest corner of the intersection of 59th Avenue and Olive Avenue, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

TRACS No. SS586 01C

| | |
|--|------------------------|
| Estimated Project Costs* | \$1,514,512.00 |
| Estimated Federal Aid Funds @ 94.3% (capped) | \$ 917,500.00 |
| City Funds @ 5.7% | \$ 55,459.00 |
| Estimated City Funds @ 100% | \$ 541,553.00 |
| * Total Estimated Cost of the Project | \$ 1,514,512.00 |
| *(Includes 15% CE and 5% project contingencies) | |

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State Shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

b. Upon approval by FHWA, and with the aid and consent of the City and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the project.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the city will be responsible for any overage.

d. Upon execution of this Agreement, invoice the City for reimbursement to the State for the City's estimated share of the Project, currently estimated at \$597,012.00. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City Shall:

a. Upon execution of this Agreement designate the State as authorized agent for the City.

b. Deposit funds with the State in an amount equal to the difference between and the total cost of the work provided for in this Agreement and the amount of Federal aid (capped) received.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Provide for cost and, as an annual item in the City's budget, proper maintenance of the Project including all of the Project components.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said project.

4. This Intergovernmental Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Glendale
Attention: City Planning Department
5850 W. Glendale Avenue
Glendale, Arizona 85301
Phone: 623 930-3634


11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

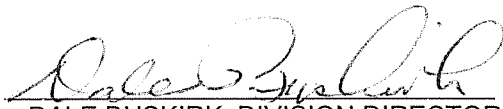
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF GLENDALE

STATE OF ARIZONA

Department of Transportation


By 
ED BEASLEY
City Manager

By 
DALE BUSKIRK, DIVISION DIRECTOR
Transportation Planning Division

Date 1/27/07

Date 2/12/07

ATTEST

By 
PAMELA HANNA
City Clerk

Date 02/01/07

RESOLUTION NO. 4015 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE 59TH AVENUE STREET WIDENING PROJECT BETWEEN OLIVE AVENUE AND MOUNTAIN VIEW ROAD.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:


SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (**JPA 06-127**) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

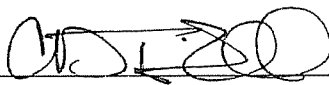
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 23rd day of January, 2007.


MAYOR

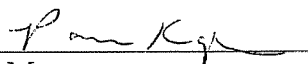
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

JPA 06-127

INTERGOVERNMENTAL AGREEMENT

CITY OF GLENDALE
DETERMINATION LETTER


I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned CITY Attorney who has determined that it is in proper form and within the powers and authority granted to CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated 1/25, 2008

A handwritten signature in black ink, appearing to be "G. S. [unclear]", written over a horizontal line.

Attorney

| | | |
|---|--|--|
| <p>TERRY GODDARD Attorney General</p> | <p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p> | <p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p> |
|---|--|--|

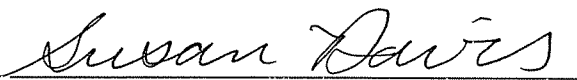
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-1235TRN (**JPA 06-127**), an Agreement between public agencies, i.e., The State of Arizona and The City of Glendale, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 15, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:1000222
Attachment